

TITLE: Transfer of the Council's Housing Stock

TO/ON: The Cabinet – 23rd February 2006
The Council – 23rd February 2006

BY: Chief Executive and Executive Director of Resources

LEAD MEMBER: Leader of the Council and Portfolio Holder for Housing

STATUS: For Publication

1. PURPOSE OF THE REPORT

- 1.1 To seek approval to the terms for transfer of the Council's housing stock to Green Vale Homes Ltd.

2. RECOMMENDATIONS

- 2.1 The Council is recommended to:

- (1) confirm that it is content with the terms of the transfer and financial package on offer and to pass the following formal resolutions:

that the execution (whether by application of the Council's seal (to deeds) or otherwise), delivery and performance of the Agreement (including all ancillary agreements detailed in the Schedules thereto) to be made between Green Vale Homes Limited and the Council, and any other agreement, document, transfer and deed to be entered into thereunder or in connection therewith be approved;

- (a) that the execution, delivery and performance of the transfer be approved, subject to receipt of the consent of the Deputy Prime Minister (in his capacity as First Secretary of State at the office of the Deputy Prime Minister) pursuant to Sections 32-34 and 43 of the Housing Act 1985 for the disposal of the Council's housing stock to the Company, together with any other

appropriate consents which may be necessary for the disposal of any non-housing related assets;

- (b) that the execution, delivery and performance of the Deeds of Warranty which form part of the Agreement to be given to the funders or to any security trustee for the funders and the Company be approved;
- (c) that the Acting Chief Executive, in consultation with the Council Leader be authorised to agree any final financial issues which must be settled before completion of the transfer;
- (d) that the Acting Chief Executive, in consultation with the Leader, be authorised to resolve any outstanding matter which might need to be dealt with before completion of the transfer, including agreement of the final terms of all documentation;
- (e) that the Head of Legal and Democratic Services be authorised to attend to the sealing and signing of all appropriate documentation in relation to the transfer by the Council to the Company.

- (2) To note that the Head of Legal and Democratic Services is required to give an opinion to funders in the form set out in Appendix 1.

3. REPORT AND REASONS FOR RECOMMENDATIONS AND TIMETABLE FOR IMPLEMENTATION

Background

- 3.1 This report represents the culmination of the process which began formally on 13th October 2004 when the Council resolved to consult tenants on a large scale voluntary transfer of the housing stock to a Registered Social Landlord (RSL).
- 3.2 At this stage the Council chose to promote the formation of Green Vale Homes Ltd as the new RSL and recognising the risks around the creation of a relatively small new RSL chose Pennine Housing 2000 as its partner in a new RSL Group structure called Trans-Pennine Housing.
- 3.3 The then Executive agreed the offer to tenants at its meeting on 20th July 2005. Following consultation with tenants which gave a favourable view on the offer the Cabinet on 12th October agreed to proceed to a ballot of tenants. The result was as follows:

	Number	%
Votes For	2308	81.9
Votes Against	487	17.3
Spoilt Papers	20	0.8
Total	2815	100.0

3.5.1 Whilst the ballot process has been going on the Council's officers and advisers have been working with Green Vale Homes to conclude the formal legal agreement on the transfer. The Council side of the negotiations has been led by the Chief Executive and Executive Director of Resources. This report summarises the terms of the Transfer Agreement and the implications for the Council. The whole Transfer Agreement is a very substantial legal document and it is not being circulated to all members for this reason. The document can, however, be viewed on request to the Head of Legal and Democratic Services.

3.5.2 While many elements of the stock transfer process are proscribed by the Government (such as the way in which properties are valued) there is at the heart of the transfer process a commercial negotiation between the Council and the new landlord. In entering into any such negotiation it is important to understand what your objectives are. From the Council side officers have been working with the following objectives in mind:

- That the transfer process needs to succeed. Thus, the promises made should be deliverable and the Green Vale Homes business plan should be robust. Given the risk to Green Vale from the continuation of right to buy sales officers have also had an eye to ensuring the longer term sustainability of Green Vale.
- Protecting the Council's financial interests, for example through ensuring the maximum possible reduction in long term debt and through the availability of cash to contribute to reducing the pensions deficit, and through medium term continuation of the level of capital receipts available to the Council allowing breathing space to bring spending and resources in line..
- Achieving broader policy objectives, for instance through delivering resources to address the emerging issues around the supply of affordable housing in the Borough.
- Minimising future liabilities to the Council through additional asset transfer such as shops and garage sites and through ensuring that the Council's set up costs are met through the financial deal.

3.6 The Council's advisers and indeed those for Green Vale Homes, view the process we have undertaken as a successful model which has allowed the Council and Green Vale to make progress much faster than other transfers to a successful conclusion. This is a result of openness about objectives between the parties, a shared understanding of what we are trying to achieve, and a

considerable amount of hard work by a large number of staff and advisers on both sides.

- 3.7 The remaining sections of this report cover, the nature of the financial deal and a summary of the transfer agreement itself.

The Financial Deal

- 3.8 There are a number of components to the financial deal involved in the transfer process, some of which are transactions between the Council and Green Vale Homes and others which involve the Government. In summary these are:

- The price for the stock and associated “gap funding”
- The sale of various assets and the transfer of business items such as rent arrears by the Council to Green Vale Homes
- The repayment of the Council’s long term borrowing in relation to housing
- The sharing of capital receipts resulting from continuing right to buy sales
- The sharing of the proceeds of the VAT shelter arrangement

- 3.9 **Value of the Stock** – The Council’s stock based upon the Government’s formula has a negative value of between £17m and £19m. At the time of writing this is subject to confirmation by the Government and an update will be provided to members at the meeting.

- 3.10 **Sale of Assets** – Included within the overall deal are the sale of 10 shops, 3 community buildings and various garage sites to Green Vale Homes. These assets have all previously been accounted for within the Housing Revenue Account and form part of the estates that are transferring, thus there is no benefit in their retention. In addition, when any business is sold a value is ascribed to items such as stocks and stores and outstanding debtors (in this case largely rent arrears). These receipts offset the Council’s set up costs of £1.1m and allow the value of items such as stock to be written out of the accounts with no effect on the revenue budget. Within the context of the deal the Council has retained responsibility for a range of amenity open space which would fall to the Council to deal with were it on private estates together with a range of other land previously within the HRA which has development potential.

- 3.11 **Repayment of Long Term Borrowing** – At the point of transfer the Office of the Deputy Prime Minister (ODPM) will repay up to £23m of long term borrowing from the Public Works Loans Board on behalf of the Council. In order to maximise the benefits to the Council of this some debt restructuring will be undertaken immediately prior to transfer to replace the market loans which are currently within the debt portfolio and which ODPM will not repay. The net result of these various transactions will be to leave the Council with long terms borrowings of up to £1.8m depending upon interest rates at the point of debt restructuring. The remaining loans will, as indicated in the financial strategy, be taken out on a basis that ensures that principal as well as interest is repaid. This result represents a significant strengthening of the Council's underlying financial position.
- 3.12 **The Sharing of Right to Buy Receipts** – It is usual within a transfer agreement for the Council to be entitled to a continuing share of right to buy receipts. In this case the Council will receive £0.9m pa for five years. This is a simply structured arrangement allowing certainty and giving the Council time to adjust its capital programme to the ending of this income stream. In addition to this Green Vale Homes have agreed to use any receipts in excess of those assumed in their business plan and those paid to the Council for investment in new affordable housing in the Borough.
- 3.13 **The VAT Sharing Agreement** – This is a technical agreement which relates to the use of the differing VAT statuses of the Council and Green Vale Homes to create a financial benefit for both parties. This is an entirely proper process and is conducted in agreement with HM Revenue and Customs. The VAT sharing agreement applies to investment made in line with the Council's promises to tenants over the first 10 years post transfer. Given the level of investment anticipated the VAT share could be worth up to £8.75m. This is being split into two roughly equal parts:
- The first portion is entirely for the Council to use. It is proposed that this in the first instance be used to offset the Pension Fund Deficit resulting from the transfer and to reduce the longer term costs of the IT contract. The balance would be available for specific projects within the Borough. Use of these funds in this way is relatively common in stock transfers.
 - The second portion is used within Green Vale Homes Business Plan and reduces requirement for Gap Funding from ODPM.

In the round the financial deal balances ensuring the success of the transfer and sustainability of Green Vale Homes with protecting the Council's interests, and generating new investment in affordable housing.

The Transfer Contract

3.14 The following paragraphs summarise the main elements of the transfer contract. As indicated above the final document is extremely large, and by its very nature it is a highly complex legal document. For these reasons it has not been circulated, and the document can be accessed on request to the Head of Legal and Democratic Services.

4.1 Clause 1 – Definitions

This clause sets out the principal defined words and phrases which are used subsequently in the Agreement.

4.2 Clause 2 - Agreement to Sell

In consideration of the Company paying the Price to the Council, the Council will transfer the Property to the Company.

4.3 Clause 3 - Incumbrances

The Property is sold subject to and with the benefit of various incumbrances (such as existing covenants which affect the legal title to the Property), the Tenancies (which includes the transferring Council tenants and the former Council tenants occupying flats which they have bought) and the Rights (which include rights of way and other matters which affect or benefit the legal title to the Property).

4.4 Clause 4 - Completion and Payment of the Price

Completion is currently intended to take place on 27th March 2006. On completion, the Company will purchase all of the Property.

4.5 Clause 5 - Covenants for Title

The Council will (except where specifically stated in the transfers of the Property that only limited title guarantee will be given) sell the Property with Full Title Guarantee. Full Title Guarantee is the strongest covenant which a seller can give, though it is qualified by reference to those incumbrances referred to in the Agreement at clause 3. The process of registration of the Property at the Land Registry is complete. This will simplify the conveyancing process.

4.6 **Clause 6 - Conditions of Sale**

The provisions of this clause incorporate a set of standard conveyancing conditions called the "Standard Conditions of Sale (Fourth Edition)" (which are varied by this clause 6).

The clause also provides for general apportionment of income and outgoings. The Council receives all income from the Property and pays outgoings up to but not including the Completion Date. The Company receives income and pays outgoings on and from the Completion Date.

4.7 **Clause 7 - Warranties and Covenants**

This clause obliges the Council to enter into a Deed of Warranty in favour of both the Company and its Lenders, and also a Deed of Covenant in favour of the Company. The Deeds of Warranty provide comfort about the Council's legal title to the Property (among other things). The provisions of these documents are referred to in more detail under the Fifth Schedule below.

4.8 **Clause 8 – Nomination Arrangements and Housing Agency Agreements**

This clause provides that the parties will enter into a Nomination Rights Deed on the Completion Date. The Nomination Rights Deed allows the Council to nominate persons to vacancies occurring in the Company's housing stock. The Deed provides that, in general, the Council may nominate into three out of four such vacancies. Further detail about this is provided under Part I of the Second Schedule. The parties will also enter into a Housing Agency Agreement on the Completion Date under which the Company will provide various housing services related to Homelessness and the maintenance of the Housing Register.

4.9 **Clause 9 - Rent Arrears**

The Council has agreed to sell its arrears due from transferring tenants, leaseholders, shop tenants, former tenants and sundry debtors. The price to be paid for these arrears is yet to be agreed as it is related to the rent roll at the point of transfer, but will be calculated in accordance with an age-based formula. The rent arrears will be formally assigned under a Deed of Assignment (see Part II of the Fifteenth Schedule below) which is due to be completed on the Completion Date.

4.10 **Clause 10 - Provision of New Tenancy Agreement**

This clause requires the Company to issue a Tenancy Agreement in the form appearing in the formal consultation document (a copy of which will be set out in Part II of the Eighth Schedule to the Agreement) to all tenants who transfer from the Council on the Completion Date except for any tenants who have a Court Order for possession against them or a Notice of Intention to Seek Possession or Notice of Proceedings for Possession outstanding. This qualification was set out in the formal consultation document.

If these are discharged or withdrawn, or expire, the relevant tenants are then entitled to a Transferring Tenant's Tenancy Agreement, effective from the Completion Date.

The clause also states that the Company will give all of the additional rights contained in the Tenancy Agreement to transferring tenants even if they do not sign and return their Tenancy Agreement.

4.11 Clause 11 - Services Costs and Apportionments

Under this clause, the Council agrees to pay for all work done and services provided to the Property for the period up to but not including the Completion Date. On and from the Completion Date the Company assumes responsibility for all such matters.

4.12 Clause 12 - Contracts Affecting the Property

Broadly, contracts which relate to the Property and are ongoing on transfer are to be dealt with in one of three ways:-

- (A) they are to be assigned (in whole or part) to the Company; or
- (B) retained by the Council and held on trust for the Company; or
- (C) to be retained and completed at the Council's expense.

4.13 Clause 13 - Destruction of the Property and Insurance

The Council agrees to reimburse the Company's reasonable costs incurred in reinstating any building which is the subject of any damage as a result of a list of standard risks. Details of any such damage known to the Council will be set out in the Ninth Schedule.

In the event that the amount the Council receives from its insurers is less than the cost to the Company in repairing any damage to the Property and the amount is less because of any acts or omissions of the Council, then the Council is obliged to pay over to the Company any resulting shortfall.

Clause 13 also obliges the Company to insure the Property for its full reinstatement cost against fire and other usual risks from the Completion Date.

4.14 **Clause 14 – Staff**

The clause deals with the following matters:-

It requires the Council to set out (in Part I of the Third Schedule) the names and other related employment details of the Council's staff who are to transfer to the Company upon completion.

The Company acknowledges and undertakes that it will become the employer of the transferring staff after transfer and that the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") apply to the transfer, as well as the Statement of Practice "Staff Transfers in the Public Sector".

It provides the Company with various warranties (against which the Council may disclose) in relation to the transferring staff's employment with the Council. Accordingly, the staff are deemed to transfer on the same terms and conditions as they enjoyed with the Council and so the Company must be aware of all previous employment history.

The Council gives the Company an indemnity against losses which may be suffered by the Company as a result of breaches of the warranties, inaccuracies in the information provided by the Council in respect of transferring staff and other matters such as failure to pay the transferring staff up to the Completion Date.

The Council also agrees to indemnify the Company against any claims made by or in relation to staff retained by the Council. The Company could bring a claim under this indemnity if, for example, the Council fails to include an employee previously working in the Housing Service on the transfer list and that employee is later dismissed by the Council, and makes a claim against the Company. The same limitations on claims apply to this clause as to those referred to in 14.4 above.

Before transfer, the Company will gain entry into the West Yorkshire Local Government Pensions Fund, for the benefit of the transferring employees. There is no difference in the benefits payable in this Fund to those in the Lancashire Fund. However, it is administratively more simple for the whole of the Trans Pennine Group to be within a single pension fund and also the costs to Green Vale Homes of becoming an admitted body are less in the West Yorkshire Fund.

4.15 **Clause 15 - Support Services Employees**

4.16 Following transfer, the Council will provide a number of services to the Company under agreements set out in Part I of the Tenth Schedule.

4.17 **Clause 16 - Council's Obligations**

The Council's obligations under this clause include the following:-

To deliver to the Company within 28 days of transfer all management records and accounts relating to the property and the tenancies.

To assign to the Company the benefit of any guarantees and indemnities which may be in force for the benefit of the Council and which relate solely to the Property.

To hold on trust for the Company the benefit of that part of any guarantee or indemnity which benefits the Property but which also relates to other property of the Council.

To transfer to the Company the furniture, fittings and equipment as set out in the Twelfth Schedule. Consideration will be paid for this equipment, but the amount has not yet been agreed.

To assign within 28 days all leases and licences relating computer equipment.

To warrant that it has obtained all necessary consents for the assignment of the leases and licences of computer equipment

To provide a list of the dwellings which are subject to current right to buy applications. The cut-off date, after which no RTB sales will be completed, is 27th February. The Council will continue to accept applications under the RTB until transfer and these applications will then be processed to completion by the Green Vale Homes.

4.18 **Clause 17 – Company's Obligations**

The Company confirms that it will abide by the covenants in the Fourth Schedule of the Agreements.

4.19 **Clause 18 and 19 - Supplemental Agreements**

These clauses require the Council and the Company to enter into, on the Completion Date, various supplemental agreements scheduled in to the Agreement. Details of these are set out under the Schedules below and in particular include the RTB Sharing agreement, the Development Clawback agreement, and the price adjustment: VAT Sharing agreement.

3.16 **Clause 22 – Dispute Resolution**

Unless there is a provision elsewhere in the Agreement to the contrary, disputes under the Agreement shall be dealt with in accordance with the dispute resolution procedure set out in this clause.

3.17 **Conclusion**

This concludes the terms of the Agreement. The above is a summary only of the principal terms of the Agreement between the Council and the Company. Reference should be made to the Agreement itself if further detail is needed, and as stated above, members should contact Owen Williams to arrange this if required.

4 **SCHEDULES**

4.1 **FIRST SCHEDULE - PROPERTY**

This Schedule contains details of the Property being Transferred.

4.2 **SECOND SCHEDULE – NOMINATIONS**

Nomination Rights Deed

The purpose of the Nomination Rights Deed is to provide the Council with a means to discharge its statutory duty to secure accommodation for certain homeless and other persons. The Deed allows the Council to nominate persons for housing in 3 out of 4 Dwellings which in accordance with the provisions of the Deed are vacant and available for letting.

The procedures for nominations have been drafted to reflect current Council practice.

Housing Agency Agreement

- (i) The Company will provide services to the Council in respect of any or all of the following matters:
 - (a) Homelessness, including providing advice and assistance, dealing with applications, securing interim and temporary accommodation and undertaking services.
 - (b) Maintenance of the Housing Register.

4.3 THIRD SCHEDULE - STAFF MATTERS

- 4.3.1 Part I of the Third Schedule lists details and essential employment information about all staff transferring from the Council to the Company on the Completion Date.
- 4.3.2 Part II of the Third Schedule provides details of disclosures against the warranties contained in clause 14 of the Agreement.
- 4.3.3 Part III of the Third Schedule provides details of the car loans taken out by the transferring staff which are to be purchased by the Company.
- 4.3.4 Part IV of the Third Schedule provides details of any lease cars that may be used by transferring staff.
- 4.3.5 Part V of the Third Schedule will contain a list of any Support Service Employees (discussed above in connection with clause 15 of the Agreement).
- 4.3.6 Part VI of the Third Schedule contains a list of transferring staff who are on post entry training courses.

4.4 FOURTH SCHEDULE - DEED OF COVENANT BY THE COMPANY

- 4.4.1 This Deed of Covenant will be entered into by the Company in favour of the Council on the Completion Date.

If the Company breaches any of the covenants then the Council can serve a notice on the Company asking it to remedy the breach within 28 days (or such other period as the parties may agree). If the Company fails to remedy the breach the Council can claim damages from the Company. The exception to this is, however, that the Company shall not be so obliged to comply with particular covenants if it can demonstrate to the Council, acting reasonably, that to enforce such action would occasion an event of default, or potential event of default under the Company's Loan Agreement or any refinancing agreement it enters into pursuant to the Loan Agreement. The Council and the Company are still negotiating the extent to which this carve out applies.

Wherever possible, the Council will consult with the Company before commencing any action to enforce its rights under the terms of this Deed. Where the covenants referred to below are for the benefit of tenants, the Company agrees that the Council holds those covenants on trust for the benefit of tenants.

4.4.2 **The Covenants**

The covenants are set out in the Schedule to this Deed and include:-

- (i) (Covenant 1) To use all rental income and sale receipts from the Property for its management, maintenance, repair, modernisation and improvement and otherwise for the provision of social housing primarily in. It is provided that the covenant will not prevent the Company from using the Property as security to facilitate its permitted objects.
- (ii) (Covenant 2) Not to do or omit to do anything which might result in the cancellation or withdrawal of the Company's registration by the Housing Corporation.
- (iii) (Covenant 3) For an initial period of five years to attend regular liaison meetings with the Council and to provide the Council with adequate information to enable the Council to satisfy itself that the Company is complying with all of its obligations under the Agreement.
- (iv) (Covenant 4) To participate in the Housing Organisations Mobility and Exchange Scheme.
- (v) (Covenant 5) To comply with the Company's obligation as landlord under the tenancies and to comply with the Housing Corporation's guidance.
- (vi) (Covenant 6) To comply with the promises made in the Consultation Document and in particular to carry out the catch up repairs and improvements programmes referred to in the Consultation document within the timescales set out in the Consultation Document.
- (vii) (Covenant 7) Not to seek possession of any of the properties occupied by transferring tenants on any grounds other than those specified in the Transferring Tenant's Tenancy Agreement.
- (viii) (Covenant 8) To consult with each tenant on changes in housing management as though section 105 of the Housing Act 1985 applied to the Tenancy Agreement.
- (ix) (Covenant 9) To allow successor tenants to exercise the Preserved Right to Buy.

- (x) (Covenant 10) Not to change the Company's Rules insofar as they relate to local authority or tenant representation without the Council's prior consent given in writing which is not to be unreasonably withheld or delayed.
- (xi) (Covenant 11) To maintain amenity land and play areas forming part of the Property for so long as they remain amenity land and to the standard which they are currently maintained by the Council.
- (xii) (Covenant 16) Not to merge or amalgamate with another or become a subsidiary of any other body without consulting with the Council and taking its views into account.
- (xiii) (Covenant 23) To maintain its headquarters in Rossendale for the first 10 years after transfer. If the Company wishes to relocate its headquarters outside the Borough after 10 years then it must consult the Council whose request must be formally considered by the Board of the Company before a decision is made.
- (xiv) (Covenant 24) To be responsible for all minor adaptations for disabled persons costing on aggregate up to £250,000 over the first 5 years from Transfer.

4.5 **FIFTH SCHEDULE - WARRANTIES AND COVENANTS**

The Fifth Schedule contains two Deeds of Warranty (one in favour of the Lenders and the other in favour of the Company) and a Deed of Covenant by the Council in favour of the Company.

4.5.1 **Part I - Deed of Warranty in Favour of the Lenders**

The Deed provides for a procedure for the Lenders to make a claim under the Deed. The damages are to be equal to the loss suffered by the Lenders as a result of the warranty being untrue, misleading or breached. The Lenders must demonstrate a loss before a claim can be made. This is likely to occur only when the Company is in financial difficulties and the Lenders have repossessed some or all of the Property.

The Deed of Warranty will provide that claims may only be brought by the Lenders within a fixed period from the Completion Date. This period will be at least the length of the loan and as likely to be around 30 years. The warranties are set out in a Schedule and include warranties in respect of the matters summarised below:-

(i) **Statements**

That the Council has disclosed all material information which ought to be disclosed to a prudent mortgagee.

(ii) **Title**

That the Council has good and marketable title to the Property. That the Property enjoys all rights and easements necessary for its continued use and is free from any right of any person which could restrict them. That road's which provide access to the Property and roads and sewers within the Property are maintainable at the public expense.

(iii) **Encumbrances**

The property is free from any mortgage and is not subject to other adverse matters which may materially affect its value. That there are no subsisting entries at the Land Registry, HM Land Charges Registry and/or Local Land Charges Registry which are of an onerous or unusual nature.

(iv) **Planning Matters**

That all the property has appropriate planning permission for its current use. That no enforcement action could be taken in relation to these planning permissions or in relation to any planning agreements.

(v) **Statutory Obligations**

That no action could be taken against the Council in respect of its compliance with all appropriate statutory and bye-law requirements relating to the Property.

(vi) **Adverse Orders**

That the Property is not subject to any compulsory purchase notices or other similar matters.

(vii) **Leases**

Where the Council's title to any part of the Property transferring is leasehold the Council warrants that there are no unusual liabilities associated with the leasehold title.

(viii) **Tenancies**

That the Property has the benefit of all the tenancies and the gross weekly rent information provided by the Council is accurate (i.e. that the Rent Roll which shall be annexed to the Agreement is accurate). That there are no claims or potential claims against the Council by tenants.

(ix) **Information and Statistics Supplied**

That information supplied by the Council (which is incorporated within the Agreement) is accurate and all information provided to FPDSavills Commercial Limited (who carried out the Stock Condition Survey) was accurate at the time it was provided to them.

(x) **Sales Off**

This warranty relates to the forms of Conveyances, Leases and Transfers used by the Council in previous sales. Examples of such documents are to be annexed to the Agreement. The warranty provides the Company with reassurance that the terms of the sales off are appropriate and in particular that it can recover its future costs of repairs and improvements.

(xi) **Disputes and Litigation**

That there are no ongoing disputes which affect the Property.

(xii) **Environmental Matters**

This paragraph deals with a number of environmental issues which could affect the Property. In particular, the Council warrants that the Property complies with all current environmental laws and that there is no environmental contamination or dangerous substance affecting at, on, or under any of the Property.

The Council is looking to put in place insurance in respect of claims which the Company or the Lenders make against the terms of the environmental warranties. Such insurance would not necessarily cover the full amount of any claim made, or extend to the same length of time as the warranty period.

(xiii) **Vires**

That the Council has power to enter into the Agreement.

(xiv) **Absence of Adverse Replies**

That if the Company had submitted various standard conveyancing searches in respect of the Property, no adverse replies would have been revealed.

(xv) **Shop Leases**

This paragraph contains a number of warranties in respect of any shop leases entered into by the Council including that that the liability of the original tenant has not been modified, that there is no right for the tenants to terminate the leases prior to the effluxion of time and that the rent is reviewable on an upwards only basis.

(xvi) **Wayleaves**

That the property is not subject to any wayleave which is of an onerous or unusual nature and that any wayleaves can be terminated by giving not more than six months notice.

(xvii) **Telecommunications Equipment**

That there is no telecommunications or security equipment on the Property belonging to any third party other than that belonging to tenants.

(xviii) **Flooding**

It is likely that a warranty to the effect that no property has been flooded and/or no part of the property is situated in a Flood Plain will also be included.

Schedule 2 - Disclosures

The Council's disclosures against the warranties will be set out in this Schedule. A disclosure will be made where a matter is not as stated in one of the warranties.

4.5.2 Fifth Schedule, Part II - Deed of Warranty by the Council in Favour of the Company

The form of this document is similar to the Council's warranty in favour of the Lenders and the statements (warranties) given are identical to the Lender's warranties.

As with the Lender's Warranty, the Company may in the event of any warranty being untrue, misleading or breached, serve notice on the Council

and if the breach is not remedied within 28 days or if the Council has not given a satisfactory undertaking to remedy the breach (or the breach is otherwise not remediable) the Company is entitled to claim damages for loss suffered.

The principal differences between the Company's Deed of Warranty and the Lender's Deed of Warranty are that the Company's rights to claim are limited in the following ways (the main limitations only are listed):-

- claims for breach of any of the warranties (other than under warranties xii and xiii – the environmental and vires warranties respectively) may only be brought within a period of 18 years from the Completion Date;
 - claims for less than £1000 cannot be brought until they amount (in the aggregate) to £10,000;
 - claims (other than in respect of vires and environmental claims) in respect of each dwelling forming part of the Property or other part of the Property affected by the breach of warranty are likely to be limited to the Rent Income foregone figure which is set out in the Right to Buy Sharing Agreement;
 - the limit on environmental claims will be a separate fixed sum which has yet to be agreed. The Company have requested an amount of £20m while the Council have offered an amount equivalent to the amount of the Peak Debt of the Company which is in the region of £17m.
- there is no financial limit on vires claims;
- There are provisions which are designed to ensure that, if claims arising out of the same facts and circumstances are made both by the Company and its Lenders, the Council will only be required to meet the claim to the Lenders.

The above limitations are still being negotiated between the parties.

4.5.3 **Fifth Schedule, Part III - Deed of Covenant by the Council in Favour of the Company**

In this Deed, the Council enters into various covenants with the Company. If the Council breaches any of the covenants set out in this Deed then the Company can serve a notice on the Council asking it to remedy the breach within 28 days. If the Council fails to remedy the breach (or it cannot be remedied) the Company can claim damages from the Council.

The covenants include the following:-

- (i) To co-operate with the Company by considering joint objectives for housing in Rossendale and by giving formal and reasonable consideration to the use of its statutory powers to assist the Company in the fulfilment of its objectives.
- (ii) To maintain all amenity and play areas which will remain in the ownership of the Council and which adjoin or are adjacent to the Property until such areas are sold or their use changes.
- (iii) To answer (and at its own cost) all requisitions raised by the Land Registry in respect of the Council's title to the Property to enable the Company to be registered at the Land Registry with absolute title.
- (iv) To use reasonable endeavours to process all claims for Housing Benefit within the statutory periods.

4.6 **SIXTH SCHEDULE**

This Schedule will contain a listing of the Covenants affecting the property which will be assigned to the Company and those that will be retained by the Council.

4.7 **SEVENTH SCHEDULE - CONVEYANCING DOCUMENTS ETC**

4.7.1 **Form of Transfer for the Property**

The Seventh Schedule sets out the form of Transfer which is the form of legal document transferring ownership in the Property to the Company.

The Transfer recites that the Company takes the Property subject to and with the benefit of any existing rights, encumbrances and tenancies/leases which affect the Property.

The Transfer provides for various additional rights to be granted to the Company over land retained by the Council and the Company grants to the Council certain reciprocal rights over the Property purchased.

The Company agrees to abide by all of the covenants which currently affect the title to the Property and indemnifies the Council against any breach.

The Company agrees with the Council to impose various covenants on right to buy purchasers. The terms of these covenants are intended to be similar to those previously imposed by the Council in order to protect the amenity of the estates.

The Company also covenants not to dispose of any of the Property without the Consent of the Office of the Deputy Prime Minister.

4.8 **EIGHTH SCHEDULE – TENANCY AGREEMENTS**

This Schedule contains a copy of the Council's existing secure tenancy and the Company's Tenancy Agreement.

4.9 **NINTH SCHEDULE - INSURANCE CLAIMS**

In this Schedule, the Council discloses details of any current damage which affects the transferred properties.

4.10 **TENTH SCHEDULE - SUPPORT SERVICES AGREEMENTS**

4.10.1 Part I and II of this Schedule contain all of the agreements for services that the parties will provide to each other after transfer.

(i) The Company will provide the following services to the Council:

Homelessness

Housing Register

Some signposting services via the Bacup Neighbourhood Office

(ii) The Council will provide the following services to the Company:

Health and Safety Advice

A customer access point through the One Stop Shop.

In addition there will be temporary arrangements around IT, repairs to public buildings and possibly grounds maintenance.

4.11 **ELEVENTH SCHEDULE – RIGHT TO BUY APPLICANTS**

The Eleventh Schedule contains a list of current Right to Buy Applicants.

4.12 **TWELFTH SCHEDULE- LIST OF EQUIPMENT TRANSFERRING**

This Schedule is split into various points and identifies furnishings and equipment which are to be purchased by the Company. The lists are being prepared by the Council.

4.13 **THIRTEENTH SCHEDULE – SETTING UP COSTS**

This will be a listing of the costs included in setting up the Company which will be met through the Gap Funding Agreement and any Repayable Loans which will be repaid to the Council on the Transfer Date.

4.14 **FOURTEENTH SCHEDULE**

Part I

4.14.1 **Right to Buy Sharing Agreement**

This Agreement provides that any capital receipts arising on preserved right to buy sales are to be apportioned between the Council and the Company, the details are given above.

Part II

4.14.2 **Disposal Clawback Agreement**

The purpose of this agreement is to ensure that if the Company disposes of property in a certain way then the Council shall share in the value received by the Company. The Council will receive 50% of any such consideration after the subtraction of any reasonable items of cost and expenditure properly incurred by the Company in relation to the disposal. This agreement will last for 10 years.

The provisions of this clawback arrangement are not binding on any mortgagee (i.e. the Lenders) or any successor. The types of disposals that are not caught by this agreement include any disposal by way of a mortgage or a charge, a disposal effected pursuant to the right to buy or any disposal which is at the express direction of any mortgagee etc. pursuant to the terms of the Loan Agreement of any Refinancing Agreement.

Part III

4.14.3 **Price Adjustment : VAT Sharing**

Pursuant to the provisions of this Schedule the savings realised through the VAT shelter scheme arrangements detailed above are to be shared, as indicated above.

FIFTEENTH SCHEDULE

Part I

4.14.4 Deed of Assignment of Rent and Service Charges Arrears

Under this Agreement, the rent arrears which are to be purchased by the Company are assigned. The Council is also obliged to account to the Company for any arrears received by it after completion.

Part II

4.14.5 Housing Benefit Protocol

This agreement provides that the Council and the Company will work closely together to ensure a smooth administration of Housing Benefit claims.

Part III

4.14.6 Housing Benefit Verification Agreement

This agreement allows the Company to verify housing benefit claims.

Part IV

4.14.7 Civil Emergency Agreement

This agreement provides that the Company will provide help and assistance to the Council in the event of an emergency including making provision for those made homeless, protecting personal effects, and participating in the transfer of its staff on the Council's emergency procedures.

4.15 SIXTEENTH SCHEDULE – DEVELOPMENT AGREEMENT

4.15.1 Development Agreement

Under the terms of this Agreement, the Company agrees to undertake certain works listed in a Schedule to the Development Agreement. The aim of the development works is to enhance the value of the transferred properties and broadly corresponds to the programme of works detailed in the Consultation Document. This Agreement is intended to enable the Company to recover VAT incurred on sub-contractor's invoices when carrying out the various enhancement works set out in the Schedule.

The Council is able to share in VAT recovered by the Company under the VAT shelter scheme through the Price Adjustment: VAT Sharing schedule (see Schedule 14 above).

Due to recent Inland Revenue decisions, it is possible that the VAT shelter scheme arrangements may lead to adverse consequences for the Company in respect of its liability to pay Corporation Tax. As a consequence of this, the Council and the Company have agreed a mechanism whereby the VAT shelter scheme arrangements may be unwound (but preserving the obligation of the Company to complete the works programme as specified in the promises in the Consultation Document). The mechanism for doing this involves the parties entering into one of the two alternative deeds contained in the Seventeenth Schedule.

4.16 **SEVENTEENTH SCHEDULE – DEEDS OF VARIATION**

As mentioned above in connection with the Development Agreement, this Schedule contains two Deeds which can be used to vary the VAT shelter scheme arrangements. The arrangements can either be unwound in part (pursuant to the Deed appearing in Part I) or in full (pursuant to the Deed appearing in Part II). In each case, the obligation of the Company to complete the works programme in accordance with the Consultation Document is preserved through the Deed.

4.17 **EIGHTEENTH SCHEDULE**

Part I

4.17.1 **Partnership Agreement**

This agreement operates to enshrine a particular approach to future relations between the Council and the Company by ensuring that both parties will work together on matters of strategic importance.

Part II

4.17.2 **Media Communications Protocol**

This protocol details how the Council and Company will work together to communicate with the publicity staff and other stakeholders in the borough of Rossendale following transfer.

Part III

4.17.3 **Elections Protocol**

This protocol represents an agreement by Green Vale Homes to facilitate the involvement of their staff in staffing elections on the same basis as at present and an undertaking by Green Vale Homes to make space available within communal or community facilities for polling stations free of charge if required.

- 4.18 Probably the most significant issue for the Council within the above are the various warranties that the Council has to give in relation to items such as environmental conditions in relation to the transferring property. The position arrived at in the negotiating process is one regarded by the Council's advisers as very much the industry standard. However, it is important that members understand the implications of the warranties. To take the asbestos warranty as an example if during a period of 18 years after the transfer Green Vale Homes discover asbestos requiring removal which costs in excess of the allowance in their business plan they could potentially seek a sum of money of between £17m and £20m from the Council. In order to minimise the risks of this the Council has had surveys undertaken which give it comfort in relation to the items being warranted and also ensured that where appropriate prudent provision is made within the Green Vale Homes business plan. In addition while it is not possible, or economically sensible, to insure all the risks around the warranties some insurance will be taken out at transfer.
- 4.19 Another element of interest to members will be the continuing relationships between the Council and Green Vale Homes which are formalised in Service Level Agreements. The most operationally significant is the fact that Green Vale Homes will continue to deliver the Homelessness service on behalf of the Council. This will maintain current arrangements and thus minimise disruption at a time of change. With the exception of the arrangements in relation to Customer Services the arrangements identified are largely transitional allowing each side time to put in place alternative arrangements.

Next Steps

- 4.20 While agreement has been reached between the Council and Green Vale Homes on the terms of the agreement and by the time Council meets to consider this report Green Vale Homes will have been registered by the Housing Corporation there may need to be some amendments to the final agreement in the light of the views of the organisations providing funding to Green Vale Homes. Also the final valuation of some items such as rent arrears can only be agreed at the point of transfer. Experience from other transfers is that such items are likely to need to be concluded in a very short space of time. For this reason the recommendations made at the head of this report allow delegated authority to the Acting Chief Executive in consultation with the Leader of the Council as portfolio holder to conclude these matters.
- 4.21 The scheduled date for the final transfer is 27th March and both Green Vale Homes and the Council will be taking steps to ensure that the transfer itself and the launch of the new organisation receive positive coverage.

4.22 Whilst the Council will have transferred its housing stock it will still, for statutory reasons, be necessary to maintain the Housing Revenue Account until 31st March 2007, although there should be no transactions during 2006/07. Appropriate arrangements have been made to ensure that the Council has staff resources available to close the HRA at the end of the current financial year.

5. CORPORATE IMPROVEMENT PRIORITIES

5.1 FINANCE AND RISK MANAGEMENT

5.1.1 This is one of the biggest financial transactions (if not the biggest) which the Council will ever undertake. As indicated in the body of the report the transfer process generates significant investment for the housing stock (£260m over the 30 year business plan with £40m in the first five years). In addition the Government is providing “gap funding” to Green Vale Homes reflecting the current negative value of the stock, conditional upon delivery of the Council’s promises to tenants.

5.1.2 The purpose of stock transfer is to improve the lives of tenants. However the Council has achieved a range of benefits from the process which are reflected in the body of the report. In particular there is scope for the Council in partnership with Green Vale Homes to begin to address the issue of the supply of affordable housing.

5.1.3 On a more mundane level the Council will see itself with a significantly stronger balance sheet as a result of reducing its long term borrowings to under £2m. The consequential revenue benefits of this are reflected in the budget proposals elsewhere on the Council’s agenda and offset in part the loss of income to the General Fund from transfer.

5.1.4 The commercial deal reflected in this report also allows the Council to take steps to reduce the long term costs of the current IT contract and to address to some extent the increasing deficit on the pension fund without recourse to the local taxpayer. Some resources are also available to address the Council’s aspirations around regeneration and redevelopment of facilities across the Valley.

5.1.5 In terms of risk issues these are identified in the body of the report and summarised below.

5.2 MEMBER DEVELOPMENT AND POLITICAL ARRANGEMENTS

5.2.1 There is no immediate impact upon this corporate improvement priority.

5.3 HUMAN RESOURCES

5.3.1 The transfer of staff from the Council to Green Vale Homes under the provisions of the TUPE regulations is reflected within the Transfer Agreement.

5.4 ANY OTHER RELEVANT CORPORATE PRIORITIES

5.4.1 The delivery of improvements to the Housing Stock through the transfer process and the improvement of services to tenants are both current corporate priorities. The approval of the transfer agreement by the Council is a further milestone along the road to releasing very significant levels of investment which will result in improvements to the quality of life for people across the Valley.

6. RISK

6.1 Any significant commercial contract contains risks, for all parties, given the scale of this agreement it would be surprising were there to be no risk at all. The key risks are identified in the body of this report. However, in summary they are:

For the Council

- The risks around warranties. In this area the Council has undertaken as much due diligence as possible, and will offset some of the risks through insurance. While the work undertaken would indicate that these steps are adequate it is always possible that new information will emerge that leads to a call on these warranties.
- The risks around a faster fall off in right to buy receipts due to declining sales than anticipated due to the sharing formula. This can be mitigated through the careful allocation of capital resources only when resource levels are certain.
- Risks around the creation of a strategic housing function within the Council which will be able to ensure that Green Vale Homes is delivering the Council's promises to tenants. This is mitigated through the allocation of additional resources to this function as proposed in the report on the revenue budget for 2006/07 elsewhere on the Council's agenda.

For Green Vale Homes

- Risks around the sustainability of the organisation in the face of continued stock attrition as a result of right to buy sales. This is mitigated in part through a cautious business plan, in part through accessing economies of scale as part of the Trans-Pennine Group and in part through plans to develop more stock to replace that lost through right to buy, although this contains some risks around current planning policy.

- Risks around the ability of the organisation to handle such a rapid increase in the level of investment resources available to it. This is mitigated through accessing the existing skill available within the Trans Pennine Group and through the procurement of effective partnership contracts with construction companies in line with national best practice.

6.2 The risks in this Stock Transfer are broadly no greater than average for such a deal and less than in some such arrangements.

7. LEGAL IMPLICATIONS ARISING FROM THE REPORT

7.1

8. EQUALITIES ISSUES ARISING FROM THE REPORT

8.1 The delivery of the Council's promises to tenants will in particular result in improvements in services to people with disabilities, while adherence to the relevant national codes will ensure that Green Vale Homes will not act in a manner that discriminates against any individual or group.

9. WARDS AFFECTED

9.1 All

10. CONSULTATIONS

10.1 The whole stock transfer process has been founded upon consultation with tenants. The transfer agreement gives legal expression to the wishes of tenants as expressed in the ballot result and the offer document. The transfer agreement itself will be subject to approval by the Board of Green Vale Homes as well as by the Council.

Background documents:

Draft Agreement between Rossendale Borough Council and Green Vale Homes for the Transfer of Housing Stock.

For further information on the details of this report, please contact:

George Graham Executive Director of Resources, tel. (01706) 244780, or e-mail: georgegraham@rossendalebc.gov.uk

Appendix 1

HEAD OF LEGAL AND DEMOCRATIC SERVICES

Futures Park, Newchurch Road, Bacup, Lancashire.
OL13 OBB

Website: www.rossendale.gov.uk

This matter is being dealt with by:

Name: Linda Fisher

Telephone: 01706 252447

Email: lindafisher@rossendalebc.gov.uk

Our reference: LF/DF

Your reference:

Dear Sirs

Re: Transfer of Housing Stock – between Rossendale Borough Council (1) and Green Vale Homes Limited (2)

I refer to the proposed sale by Rossendale Borough Council (the "**Council**") to Limited (the "**Company**") of the Council's housing stock and in particular the Agreement for Transfer of Housing Stock between the Council and the Company dated on or about [*insert date*] and each schedule, agreement, document, contract, transfer and deed entered into under or in connection therewith including the Deed of Warranty between the Council and the Company and the Deed of Collateral Warranty between the Council and the [**Lender**] and the transfer between the Council and the Company each dated on or about [*insert date*] (all such agreements, deeds and documents together with all other documents entered into or to be entered into by the Council with or in favour of the Company, or the [**Lender**] on or about the date hereof being, together, the "**Documents**")

In connection with the giving of this opinion, I have examined:

- (a) the Documents in the final form prior to execution and delivery thereof by the Council;
- (b) the Council's Constitution for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Executive;

- (c) the minutes and resolutions of the Council dated [*insert date*], [the Council's Executive dated [*insert date*]] authorising, inter alia, the entry into and the execution and delivery of the Documents; and
- (d) such other documents as might reasonably be considered appropriate for the purposes of giving this opinion,

and made such other enquiries as might reasonably be expected of me.

For the purpose of giving this opinion, I have assumed:

- 1 that all parties to the Documents, other than the Council, have the capacity, power and authority to enter into and perform their respective obligations under the Documents;
- 2 that each of the Documents is a legally valid obligation of each party to it other than the Council; and
- 3 that no foreign law affects any of the conclusions stated below.

I do not express any opinion as to, nor have I investigated, the laws of any jurisdiction other than England.

I am of the opinion that, as at the date hereof, as a matter of English Law, and subject to the Council obtaining the consent of the Secretary of State under sections 32, 34 and 43 of the Housing Act 1985 and under section 25 of the Local Government Act 1988 (together the "**Consents**"), the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Documents and has taken all necessary action and obtained all necessary consents to authorise the execution and delivery of the Documents and the performance of its obligations thereunder in accordance with their respective terms.

On receipt of the Consents, neither the execution and the delivery of, nor the performance by the Council of its obligations under, the Documents will violate any provision of any existing applicable law, rule, regulation or agreement binding on the Council, and the Documents constitute valid and legally binding obligations of the Council enforceable in accordance with their respective terms.

I confirm that the Consents have been obtained by the Council and such consents are unconditional or, if conditional in any respect, any conditions attaching thereto have been satisfied in full.

I confirm that, once the Council's common seal has been affixed to the Documents to be executed as deeds and attested by the [*insert position of authorised signatory*] or once any such Documents not required to be executed as deeds have been signed by the [*insert position of authorised signatory*] and each of the Documents has been unconditionally delivered to

the parties named thereon, they will have been validly entered into by, and will bind and be enforceable against, the Council.

The above opinions are subject to the following reservations:

- 1 Under English Law, the power of a court to order specific performance of an obligation and other equitable remedies is discretionary and, accordingly, an English Court might make an award of damages where specific performance of an obligation or equitable remedy is sought.
- 2 An English Court might not enforce the provisions relating to default interest in the Documents on the grounds that the provisions thereof do not constitute a genuine pre-estimate of the loss suffered in the circumstances envisaged and may, therefore, not be recoverable.
- 3 Notwithstanding any express words to the contrary in any of the Documents, an English Court may regard a certificate of any person as to the amount of any sum due of it or any other person under any of the Documents as no more than prima facie evidence of such amount.
- 4 The question of whether or not the provisions in the Documents which are illegal, invalid or unenforceable under applicable law may be severed from other provisions in order to save those other provisions, would be determined by an English Court at its discretion.
- 5 The Documents may be amended orally by the parties thereto, notwithstanding provisions therein to the contrary.
- 6 The obligations of the Council under the Documents may be limited by bankruptcy, insolvency, liquidation or other rules affecting creditors' rights generally.
- 7 English courts may not give effect to any indemnity for legal costs incurred by an unsuccessful litigant.
- 8 For the avoidance of any doubt I express no opinion as to the Council's title to the property transferred, leased or licensed pursuant to the Transfers Agreement.
- 9 The above opinions and confirmations are given by me in my capacity as Solicitor to the Council and on the condition that all personal liability is excluded.

This opinion is addressed to the parties referred to at the head of this opinion letter and is solely for their benefit. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

There follow the specimen signatures and titles of those who will or may attest the execution as deeds of the Documents (or sign Documents not required to be executed as deeds) referred to above.

Name	Title	Specimen Signature

I attach to this letter copies of the minutes and resolutions of the Council and the Council's Executive referred to therein.

Yours faithfully,

[Council Solicitor]